

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Petition for Rulemaking or, Alternatively, a	)	
Waiver of the Closed Bidding Rules for C Block	)	RM 11019
Licenses in the Broadband Personal	)	
Communications Services	)	

To: The Commission

**REPLY TO OPPOSITIONS TO PETITION FOR RULEMAKING**

Pursuant to Section 1.405 of the Commission's rules, Verizon Wireless submits these replies to parties opposing the CTIA – the Wireless Association ("CTIA") petition for rulemaking requesting that the Commission open to all bidders all licenses available in Auction No. 58.<sup>1</sup> Several parties openly support a rulemaking, either to fully or partially remove the bidding restrictions.<sup>2</sup> Many parties that "oppose" the rulemaking actually suggest changes that the Commission should make to its rules.<sup>3</sup> Clearly on the basis of the record before it, the Commission must commence a rulemaking proceeding to

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<sup>1</sup> See *Public Notice*, Report No. 2663, RM 11019 (rel. July 15, 2004) seeking comment on CTIA – The Wireless Association Petition for Rule Making or, Alternatively, a Waiver of the Closed Bidding Rules for C Block Licenses in the Broadband Personal, filed July 8, 2004 ("*CTIA Petition*").

<sup>2</sup> See *gen.* Comments of Verizon Wireless, Comments of Motorola, Inc.; Comments of Rural Cellular Association (RCA); Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BloostonLaw); Comments of T-Mobile USA, Inc.

<sup>3</sup> See, *e.g.*, Comments of Alta Communications; Comments of Madison Dearborn Partners, LLC, Opposition of Rural Telecommunications Group and the Organization for the Promotion and Advancement of Small Telecommunications Companies (RTG), Comments of Media Venture Partners; Comments of Catalyst Investors; Opposition of Council Tree Communications, Inc.

determine whether changed circumstances warrant opening all licenses in Auction No. 58.<sup>4</sup>

Verizon Wireless has already addressed most of the comments to the rulemaking since most had already been filed in the *Auction No. 58 Public Notice*,<sup>5</sup> but there are a few additional issues that commenters raise here that warrant a response. Council Tree suggests that it has provided the Commission what it calls a “[c]areful examination and granular analysis of FCC auction results [that] expose[s] the weakness of CTIA’s position.”<sup>6</sup> It claims that 82 percent of auction winnings come from set-aside or closed licenses.<sup>7</sup> That statistic is meaningless.<sup>8</sup> Nowhere in Council Tree’s comments does it attempt to show which of these winning bidders remain and are actually offering service to the public, a true test of whether the Commission’s policies have been successful.

The Commission should assess the actual success of the Commission’s policies when presented, as here, with a request to change those policies. In order to show the success of these policies, the Commission could analyze all markets, both through

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<sup>4</sup> Council Tree, for example, suggests that changed circumstances “actually underscore why the Commission must maintain the current DE rules. . . .” implying that this logic alone is reason for the Commission to do nothing and maintain the *status quo*. Council Tree at 15. However, Council Tree’s admission of changed circumstances is further evidence that the Commission must conduct a rulemaking proceeding, because the Commission must actively examine and determine the meaning of such change.

<sup>5</sup> *Public Notice Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Comment Sought on Reserve Prices or Minimum Opening Bids and other Auction Procedures*, Public Notice, DA 04-1639, Report No. AUC-03-58-A (Auction No. 58) (rel. June 18, 2004) (“*Auction No. 58 Public Notice*”).

<sup>6</sup> Opposition of Council Tree at 13.

<sup>7</sup> *Id.* at 14.

<sup>8</sup> There are many other flaws in the Council Tree analysis. For example, it suggests it is reasonable to exclude Salmon PCS from the analysis of the open licenses in Auction No. 35, yet does not exclude the carrier from the analysis of the closed licenses. *Id.* at Attachment 1, p. 2. Nor does it explain why Salmon should be excluded versus any other DE.

confidential information available to it, such as regulatory fees filings, and through supplemental requests that the licensees prove that they are offering service that the set-aside program has in fact generated benefits to the public.

No participant in this proceeding has offered any facts that would compel the Commission to keep the set-aside. Many of the commenters simply assert that the Commission must maintain the status quo, and do not attempt to support these assertions with facts.<sup>9</sup> Moreover, none has offered a compelling reason for the Commission not to conduct a rulemaking. To the contrary, T-Mobile provides evidence that closed auctions have imposed considerable costs on the public, estimating the consumer surplus costs of “delayed and unrealized deployment at between \$13.6 billion and \$32 billion.”<sup>10</sup> As Verizon Wireless has stated previously,<sup>11</sup> if facts exist that show that the set-aside program has been a success and that would justify the Commission keeping a set-aside for designated entities, the Commission must first seek these facts, examine them and make an active decision to retain, rather than simply default to, restrictive bidding rules.

Here, however, facts show that the DE set-aside has not served the public interest generally, or the goals of Section 309(j) specifically. Several commenters argue that the

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<sup>9</sup> See, e.g., Opposition of RTG at 4. “[T]he Commission’s failed partitioning and disaggregation policies . . . have conclusively shown in previous spectrum auctions that they do not adequately provide the same opportunities for small businesses as the establishment of “closed” bidding.” Further, it asserts “lifting such restrictions will only serve to deny rural consumers access to wireless services.” *Id.* at 5. But RTG provides no facts to support these claims. To the contrary, partitioning and disaggregation has been successfully used in hundreds of markets. See <http://wireless.fcc.gov/uls/>; see also Comments of AT&T Wireless Services, Inc., filed Dec. 29, 2003 in *Facilitating the Provision of Spectrum-Based Service to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket 02-381, FCC 03-202 (rel. Oct. 6, 2003).

<sup>10</sup> Comments of T-Mobile at 10-11.

<sup>11</sup> Comments of Verizon Wireless at 4.

only way for the Commission to meet its obligations under Section 309(j) of the Communications Act is to retain a set-aside for DEs.<sup>12</sup> This is not correct. As Verizon Wireless and others point out,<sup>13</sup> the Commission has frequently decided that it need *not* apply eligibility restrictions to certain set-aside licenses in order to satisfy the Section 309(j) objective of promoting economic opportunity by “disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>14</sup>

Furthermore, not all small businesses agree that the current policy of setting aside licenses for small carriers supports the Commission’s obligations under the Act. The Rural Cellular Association, which represents the interests of approximately 100 small and rural wireless licensees that offer service to the public, maintains that “there are more effective tools available to the Commission than closed bidding to provide opportunities for small businesses to compete successfully and obtain licenses.”<sup>15</sup>

BloostonLaw, which represents many small business and rural telephone company clients, states that “the Commission should consider whether the public interest is served by eliminating the eligibility restriction with regard to certain of the Auction No. 58 licenses, based on the consideration of several factors.”<sup>16</sup>

As stated above, with all other spectrum bands in which licenses have been recently auctioned, the Commission has discarded set-asides and relied instead on

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<sup>12</sup> See *gen.* Opposition of the Designated Entity Program Supporters.

<sup>13</sup> Comments of Verizon Wireless at 4-5; *CTIA Petition* at 9-10; Comments of T-Mobile at 8-10.

<sup>14</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>15</sup> Comments of Rural Cellular Association (RCA) at 3.


<sup>16</sup> Comments of BloostonLaw at 4.

bidding credits to encourage the participation of small business entities. Moreover, in so doing, the Commission has noted that its disaggregation and newly-adopted leasing rules would help small businesses to negotiate after-auction access to spectrum.<sup>17</sup> Restricting eligibility in spectrum auctions is clearly not needed to provide opportunities for entrepreneurs to participate in the provision of spectrum-based services. The Commission should not ignore the very real costs – in service delay as well as in auction revenue – that set-asides impose on the licensing process. A rulemaking need not delay the scheduled start of Auction No. 58, if the Commission quickly grants the CTIA Petition.<sup>18</sup>

Respectfully submitted,

**VERIZON WIRELESS**

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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<sup>17</sup> See, e.g., *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, 18 FCC Rcd 25162 (2003) (“AWS Order”), at ¶ 68.

<sup>18</sup> See Comments of Verizon Wireless at 4-5; *Verizon Wireless Petition* at 11-13.